MERRION OIL & GAS CORP.

IBLA 96-487 Decided December 3, 1999

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, upholding an order, issued by the Farmington District Office, requiring well operator to plug and abandon gas well or put it into production. NMNM 4565.

Reversed.

1. Oil and Gas Leases: Assignments and Transfers

The regulations do not require an operator who is neither lessee of record nor an owner of operating rights to continue in that capacity when it no longer wishes or intends to do so, and BLM's approval is not required to change operators or to terminate operator status, BLM can only "recognize" an operator when applicable regulatory requirements have been satisfied. Where the previous operator has informed BLM that it no longer is responsible for lease operations, BLM's order directing the former operator to plug and abandon or put a well into production will be reversed.

2. Oil and Gas Leases: Assignments and Transfers--Oil and Gas Leases: Bonds

Where BLM has approved a transfer of operating rights, but the transferee has not advised BLM in writing of its intent to assume responsibility for lease operations or posted a bond to cover such operations, designated a new operator in accordance with 43 C.F.R. § 3162.3 and NTL 89-1 New Mexico, and the previous operator has stated that it no longer is responsible for operations on the lease, the transferee cannot conduct operations on the ground without posting a bond.

APPEARANCES: Tommy Roberts, Esq., Farmington, New Mexico, for Appellant; Arthur Arguedas, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

The Merrion Oil and Gas Corporation (Appellant or Merrion) has appealed from a Decision of the New Mexico State Office, Bureau of Land Management (BLM), dated June 19, 1996, affirming an order issued by the Farmington District Office (FDO), which directed Merrion to plug and abandon the Alemita No. 2 gas well on Federal oil and gas lease NMNM 4565 or put the well into production. 1/

According to the record before us, Lease NMNM 4565 was issued February 8, 1968, and in 1984 the Alemita No. 2 well was drilled pursuant to a 1977 farm out agreement between Atom, Inc., then the lessee of record, and J. Gregory Merrion 2/ and Robert L. Bayless, as equal co-owners and co-operators. A designation of operator filed by Atom, Inc., on February 1, 1978, named J.G. Merrion and Bayless co-operators. They submitted an Application for Permit to Drill on December 28, 1977, and it was approved on February 10, 1978. The Alemita No. 2 well was completed on November 5, 1984, with shut-in status. According to the Monthly Report of Operations, the well has never produced and remains shut-in. (Decision at 1.)

While the lease operator, 3/ Merrion filed a Sundry Notice dated October 22, 1991, notifying BLM that it planned "to sell [the Alemita No. 2] well. If we are unable to sell it by March 1992, we will submit a procedure to P&A," i.e., plug and abandon the well. In a letter to Merrion dated May 22, 1992, BLM requested submission of plans to plug and abandon. Merrion submitted additional Sundry Notices on June 22, 1992, and July 27, 1993, giving notice of its intent to plug and abandon the well.

However, on February 14, 1994, BLM received a Transfer of Operating Rights (Sublease) form which conveyed 100 percent of the operating rights in Lease NMNM 4565 to Tola Production Co. (Tola) from the surface to the base of the Upper Chacra formation. Merrion Oil & Gas Company was not identified among the transferors, who were J.G. Merrion as Trustee of the J. Gregory Merrion and Rita V. Merrion Revocable Trust (the Trust) (31.25 percent), Robert L. Bayless (31.25 percent), and Stelaron, Inc. (35.50 percent) (collectively the transferors). BLM approved the transfer of operating rights to Tola effective March 1, 1994. (Ex. C to Statement of Reasons (SOR).)

1/ By order dated Sept. 20, 1996, this Board granted a stay of the decision pending adjudication of this appeal.

2/ To distinguish between Appellant and its principal, we will refer to J. Gregory Merrion as J.G. Merrion.

3/ The record shows that the Appellant was the bonded operator. A bond abstract dated June 22, 1999, shows that J.G. Merrion and Robert L. Bayless are the bonded co-principals, and Appellant and Merrion Petroleum Corporation are bonded as "subsidiaries to J. Gregory Merrion." Merrion Petroleum Corporation is a wholly-owned subsidiary of Appellant, and Appellant is owned by J.G. Merrion. See also BLM decision addressed to Appellant dated Apr. 28, 1983.

Subsequent to the transfer, on a Sundry Notice form dated November 16, 1994, Merrion notified BLM of a production test it had conducted on November 10, 1994, which showed that the well was capable of commercial production. By letter to Merrion dated November 18, 1994, BLM acknowledged that the well was capable of commercial production, but observed that it had been approved for plugging and abandonment since 1993. BLM therefore requested that Merrion plug and abandon it or set a production schedule.

By letter to BLM dated December 30, 1994, Merrion responded that it had sold the well to Tola by auction in November 1993. Merrion recited that it had asked Tola to run tests necessary to demonstrate that the well was capable of production, that Tola had failed to take any action, and that Merrion had completed the tests and submitted the results to BLM. Merrion had also asked Tola to submit the assignments from the transferors for BLM approval and appropriate bonding, which Tola failed to do. Appellant therefore requested time either to submit the bond and the assignments to Tola, or negotiate a deed from Tola back to "Merrion" to clear "title." (Letter from Merrion's Crystal Williams to Ken Townsend, BLM, dated December 30, 1994.)

On October 4, 1995, and February 22, 1996, BLM issued letters requesting Tola to file a general lease or statewide bond. By letter dated January 31, 1996, BLM informed Merrion that it still considered Appellant to be the operator of the Alemita No. 2 well and instructed Merrion to either plug and abandon the well or submit plans to put the well into production by May 1, 1996.

On April 18, 1996, BLM received a response from Merrion in which Merrion stated that its own attempts to obtain Tola's compliance with the BLM order had been unsuccessful. Appellant asserted that if it complied with BLM's directive, it would be liable for trespass and damages for loss of production, because the well had been deemed capable of production. On the other hand, Appellant feared that failure to comply with the BLM order exposed it to civil penalties imposed by the Government. Merrion therefore requested additional time. (Letter from Merrion's Williams to Stephen Mason, BLM, dated April 17, 1996.)

By letter dated April 19, 1996, FDO noted "the ownership problems" relative to the Alemita No. 2 well. As it had in its January letter, FDO invoked the standard language of the operating rights approval form, which also appears in 43 C.F.R. § 3106.7-1, to the effect that BLM approval of a transfer of operating rights is approved solely for administrative purposes and does not purport to certify the title of any party to the transfer. The FDO letter reiterated that Tola had not responded to repeated requests to post an acceptable lease bond "to take over the lease," and concluded that Merrion "is still considered to be the operator of this well with [their] bond [remaining] in place." Appellant was allowed until September 1, 1996, to plug and abandon the well or submit plans to put the well into production.

Merrion requested State Director Review of the FDO letter, which resulted in the June 19, 1996, Decision of the New Mexico State Office here appealed. The Decision stated:

> In order for an entity to conduct operations on a Federal oil and gas lease[,] there are two requirements that must be met: (1) The person or entity must state in writing that it is responsible under the terms and conditions of the lease for operations conducted on the lease, or a portion of the lease (43 CFR 3100.0-5(a)), (2) the person or entity must be covered by a bond (43 CFR 3104.2). These requirements must be met whenever a change in operator occurs. To date, Tola has never responded to FDO's or Merrion's requests to be recognized as operator or post an acceptable bond. Merrion is still the recognized operator of the Alemita No. 2 well.

(Decision at 2-3.) Accordingly, the New Mexico State Office upheld the FDO letter directing Merrion either to plug and abandon or submit plans to place the well in production, noting that such plans could include a request for continued shut-in, if supported by the results of a specified production verification test and evidence of the mechanical integrity of the well casing.

In its SOR, Merrion continues to argue that it is no longer responsible for performance of lease obligations as operator, because it does not have either record title or operating rights, relying on the provisions of 43 C.F.R. § 3162.3. Appellant maintains that its responsibility for well operations ended when it transferred operating rights in the well to Tola in 1992, as approved by BLM, and argues that it cannot legally comply with the BLM order to plug and abandon.

In response, BLM asserts that, according to the definition of "operator" in 43 C.F.R. § 3160.0-5, Merrion remains responsible as the operator of record. BLM argues that because "Merrion has stated in writing that it is the operator, the fact that it owns no record title or operating rights is irrelevant." (Answer at 2.) According to BLM, Merrion continues to be responsible for well operations "until another party is approved as operator under 43 C.F.R. § 3162.3 and New Mexico [Notice to Lessees and Operators of Onshore Federal Oil and Gas Leases within the jurisdiction of the New Mexico State Office (NTL)] 89-1." (Answer at 2.) In its view, Merrion's relationship with Tola is a dispute concerning ownership and strictly a private matter. (Answer at 2.)

Despite BLM's and Appellant's repeated requests to Tola asking it to assume responsibility for operations, Tola has never acknowledged the requests. The problem in BLM's analysis is the assertion that, having once been duly designated lease operator, Merrion cannot resign unless and until a new operator is designated. We find no support for this proposition in Federal onshore oil and gas regulations, which distinguish an "operating

rights owner" from an "operator." An operating rights owner is "a person or entity holding operating rights in a lease issued by the United States." 43 C.F.R. §§ 3100.0-5(j)and 3160.0-5(p). The "operating right" or "working interest" authorizes entry upon the leasehold "to conduct drilling and related operations, including production of oil or gas from such lands in accordance with the terms of the lease." 43 C.F.R. § 3100.0-5(d). In contrast:

> "Operator" means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

43 C.F.R. §§ 3100.0-5(a) and 3160.0-5(q).

BLM is correct that 43 C.F.R. § 3162.3 requires notification whenever there is a change in operators, and that NTL 89-1 requires the person or entity which intends to become operator to promptly notify BLM of the intent to accept responsibility for "all applicable terms, conditions, stipulations and restrictions concerning operations conducted on the leased land or portion thereof." (NTL 89-1 New Mexico at 2.) Further, the new operator is required to furnish evidence of adequate bond coverage in accordance with 43 C.F.R. § 3106.6 and 43 C.F.R. Subpart 3104.

[1] Here, Tola has taken no steps to assume responsibility for lease operations by advising BLM in writing that it intends to do so, which brings us to BLM's contention that Merrion could not resign as operator until after Tola or another entity stated its intention to become the operator. As we have said, no such rule is established in the regulations. 4/ Just as BLM's approval to change operators is not required, neither is its approval necessary to terminate an operator's status. Thus, where an operator which is neither lessee nor an operating rights owner no longer wishes or intends to continue in the capacity of operator, it can terminate its status as such. BLM can only "recognize" an operator, and only if that individual or entity has stated in writing that it will be responsible for lease obligations and it has provided evidence of adequate bond coverage. Devon Energy Corp., 145 IBLA 136, 145-46 (1998).

We note that with respect to transfers of operating rights, 43 C.F.R. § 3106.7-2, provides:

> The transferor and its surety shall continue to be responsible for the performance of all obligations under the lease until a transfer of record title or of operating rights (sublease) is approved by the authorized officer. If a

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4/ An operator is liable for its actions while it served as operator, regardless of its status after a transfer of operating rights.

> transfer of record title is not approved, the obligation of the transferor and its surety to the United States shall continue as though no such transfer had been filed for approval. After approval of the transfer of record title, the transferee and its surety shall be responsible for the performance of all lease obligations, notwithstanding any terms in the transfer to the contrary. When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the lease rights transferred to the sublessee.

(Emphasis added.)

[2] On the other hand, the regulation at 43 C.F.R. § 3106.7-1 provides that "[n]o transfer of record title or of operating rights (sublease) shall be approved * * * if the bond, should one be required, is insufficient. * * *." Thus, it was improper to approve the assignment before Tola had furnished evidence of a sufficient bond. Karis Oil Co., Inc., 58 IBLA 123, 124-25 (1981). The transfer without a bond having been approved, the result is that Tola cannot conduct operations under the lease interest assigned, because to be recognized as the operator on the ground, the operator must notify BLM in writing that it is responsible for all lease obligations, and it must post a bond. It is the posting of the bond which would "invest that individual with authority to conduct operations on a Federal lease." Devon Energy Corp., supra at 145; R.E. Puckett, 124 IBLA 288, 292 (1992). Irrespective of Tola's status, however, it is clear that Merrion properly could terminate its status as operator by notifying BLM of its decision to do so.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision of the State Director affirming the order to plug and abandon the Alemita No. 2 well is reversed.

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T. Britt Price
Administrative Judge

I concur:

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Gail M. Frazier
Administrative Judge